

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

77-1430

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

UNITED STATES OF AMERICA

Docket No. 77-1430

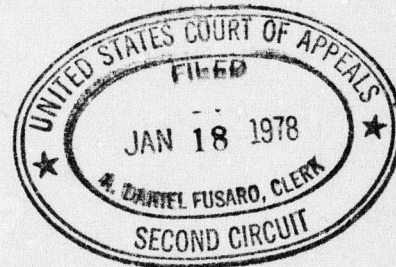
-against-

JAMES BENNETT,

Defendant-Appellant.

B
P/s

APPELLANT, JAMES BENNETT'S
BRIEF AND APPENDIX ON APPEAL



H. ELLIOT WALES
ATTORNEY AT LAW

~~345 THIRD AVENUE~~
122 E. 42nd Street
NEW YORK, N. Y. 10017

Telephone: 212 682-6806

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

UNITED STATES OF AMERICA

Docket No. 77-1430

-against-

JAMES BENNETT,

Defendant-Appellant.

APPELLANT, JAMES BENNETT'S
BRIEF ON APPEAL

This is an appeal by the defendant, James Bennett from the judgment of conviction and sentence, entered after a one-day jury trial, before District Judge George Pratt and a jury, in the Eastern District of New York (77 CR. 319). Bennett was convicted on a one-count indictment charging him with violating 18 U.S.C. 871 (a) in that he did knowingly and wilfully threaten to take the life of the President of the United States on January 25, 1977. On September 16, 1977 Judge Pratt imposed a sentence of five years, pursuant to 18 U. S. C. 4204(b)(2). A timely notice of appeal was filed. At no time since his arrest on January 25, 1977 has Bennett been admitted to bail. The legal aid society (Chris Termini, Esq.) represented Bennett at the trial. This author has been assigned by this court to represent Bennett on the appeal.

THE INDICTMENT

In its entirety, the indictment recites (Ala);

"On or about the 25th day of January, 1977, within the Eastern District of New York, the defendant, James Edwin Bennett, Jr. did knowingly and wilfully make a threat to take the life of the president of the United States."

APPLICABLE STATUTE

To the extent applicable, 18 U.S.C. 87(a) recites:

"Whoever . . . knowingly and wilfully otherwise makes any such threat against the president . . . shall be fined not more than \$1,000.00 or imprisoned not more than five years, or both."

THE PROSECUTION EVIDENCE

On Sunday, January 23, 1977, ^{Bennett,} /a resident of Suffolk County, telephoned the offices of the United States Secret Service, in Manhattan at 7:00 p.m., and was connected with Special Agent, Joseph Bergman. Bennett told Bergman that he was upset about the amnesty program that President Carter just announced. Bennett stated that he was going to travel to Washington to "embarrass" somebody at the White House. Bergman asked Bennett if he would agree to meet with agents of the United States Secret Service before he went to Washington to discuss his plans. Bennett agreed. Tr. 50-52, 59-61. In this regard Bergman testified (Tr. 52-53):

"First the caller said he was upset about President Carter's amnesty program and that he was going to Washington to embarrass somebody in the White House. I then asked him to identify himself and he said his name is Jim Bennett and I said, "James Edwin Bennett?" as a question and he said, "Jr."

I asked him when he was going to the White House and he said he was going to go the next day, on Monday. I said, "Who are you going to embarrass?" and he said he was going to embarrass somebody in the White House. I asked him how he was going to embarrass him and he said he was going to go down there and embarrass him. At this point I asked him if he would mind meeting with some agents from the Secret Service before he did go to Washington, D. C. He said that he didn't object and suggested that we meet at the Second Squad of the Suffolk County Police Department. I agreed and told him that two agents would go out there and talk to him."

The parties did not meet that evening, even though they had agreed to do so. Two days later Bennett did meet at the Headquarters Bar in Commack (in Suffolk County) with two Special Agents of the Secret Service - John Viggiano and Bredon Soden. Tr. 64, 65, 102, 103, 105. The meeting had been arranged just earlier that evening when Bennett telephoned Agent Viggiano, and "said he would like to speak with an agent about his plans to embarrass the President". Tr. 62-63.

(emphasis added)

At the meeting in the Bar later that evening, Bennett rambled about a number of issues. The conversation lasted about 45 minutes. Tr. 81, 94. He talked about the Protestant - Catholic problem in Northern Ireland. Tr. 67. He talked about the Carter amnesty decision with respect to draft dodgers. Tr. 67, 107. He also talked about family problems. Tr. 67. Agent Viggiano testified (Tr. 67):

"Yes. I remember I introduced myself to Mr. Bennett explaining who I was and why I had come out to the Headquarters Bar and telling him that it was in reference to this phone call and he agreed and he said he wanted to talk to us. He said—he talked about various issues and one thing that stuck in his mind and one of the most was about the recent amnesty made by President Carter.

One of the topics was the cause in Ireland and the Protestant-Catholic problem there and as I remember, Mr. Bennett seemed to take the side of the Catholics and the IRA.

He also talked about the amnesty decision that President Carter had -- his decision to give amnesty. I think he may have mentioned a few things about his family, what it was --"

Then Bennett began to talk about how he would embarrass the President. Tr. 69. He was going to "scale the wall of the White House." Tr. 114. Agent Viggiano testified (Tr. 69):

"It was at that time that Mr. Bennett mentioned he had been in the military and one of the ways you embarrass the President would be to go to the top of the White House and burn his military citations. Another way would be to pour paint on top of the White House." (emphasis added)

Then Bennett began to ramble about his medical problems, and his arm which apparently had been hurt or damaged in military service. This conversation about his damaged arm went as follows (Tr. 109-110):

"Mr. Bennett then started to speak about hospitals he had been in, Veteran's Hospitals. One he mentioned was in Maryland that was supposed to fix his arm and he claimed that surgery was all set up and then things changed where he was transferred to the Northport Veteran's Hospital. He claimed dissatisfaction with this hospital in the way in which they were treating his arm, and he is claiming he was not getting satisfaction from them.

At this point he elevated his voice and became more aggressive in the course of the conversation. He kept talking on this, finally he said 'if he doesn't fix this arm, I'm going to kill him'. Agent Viggiano hearing this asked Him to please clarify. He says, 'who are you going to kill?' and he said, 'the President'. And he said, 'now, once more', he says, 'what did you say'. He said, 'if he doesn't fix my arm, I am going to kill President Carter'. (emphasis added)

At this point the agents arrested Bennett. Tr. 77.

Agent Viggiano conceded that Bennett did smile a few times during the course of the conversation. Tr. 98. He even conceded that Bennett made a humorous illusion about himself on the White House roof - "can you picture me as an Irish fiddler on the roof?" Tr. 98.

Agent Soden admitted that the conversation about the hospitals lasted five to ten minutes, and that Bennett stated "he didn't feel that he was getting the service he expected". Tr. 115. It was at the end of this five to ten minute conversation with respect to the medical treatment that Bennett had been receiving that he uttered the words, "if the President doesn't fix my arm, I am going to kill him." Tr. 116. While Agent Viggiano denied that it was he (Viggiano) who first used the words "kill the president", Viggiano conceded on cross-examination that in his report to his office, he wrote that when he first questioned Bennett about his feelings toward the President, in the discussion about Bennett's arm, he asked Bennett "are you going to kill the President?" Tr. 100. Viggiano admitted (Tr. 100):

"Q Yes. Now, after Mr. Bennett had talked about hospitals and his arm, you started questioning him regarding his feelings toward the President?

A Yes.

Q Is it not a fact that you brought out the words, "Are you going to kill the President?"

A I don't remember bringing those words out.

Q Do you remember asking him, "Are you going to kill the President?"

A I don't remember that, no.

Q Would you refer to your report and see if that refreshes your memory?

A Yeah. Apparently I did ask him. I have it in the report."

Agent Soden admitted in cross-examination that Viggiano had asked Bennett, "who are you going to kill?" and Bennett then answered, "I am going to kill President Carter." Tr. 116.

At the trial, there were no problems or evidence with respect to admissions, confessions, search and seizure, or identification.

Over defense objections (Tr. 129, 142), the District Court allowed FBI Agent Robert Lee to testify that on October 25, 1976, at 10:00 P.M., Bennett had telephoned the New York City office of the FBI, and had told Agent Lee that he was going to Washington "to embarrass the President". Agent Lee asked Bennett if he was going to harm the President. Tr. 146. Bennett stated that "he knew the law", and he was going to Washington merely to "embarrass the President". Tr. 147.

The District Court gave appropriate limiting instructions with respect to the receipt of that evidence. Tr. 144.

Bennett did not testify, nor did he call any witnesses. Tr. 150.

The District Court denied motions for a judgment of acquittal. Tr. 149, 150.

This appeal does not present any issues with regard to the propriety of the trial court's charge or the Government's summation. Nor does it question any of the Trial Court's rulings, though the court's ruling with regard to the receipt of the prior act ~~was~~ questionable and close. We do not question any of the rulings made at the trial itself with regard to the receipt of evidence.

This brief addresses itself solely to the question of the sufficiency of the evidence. That issue actually raises profound constitutional questions with regard to the first amendment protections of the right to free speech and criticism of presidential decisions as against the powers of the Congress to protect the President of the United States from those who truly threaten the life of the President by words (and not by conduct).

EAGLE-A
TYPE-ERASE
25% COTTON FIBER USA

POINT ONE

THE EVIDENCE WAS INSUFFICIENT TO
SUSTAIN THE CONVICTION

Bennett conversed for about 45 minutes with two agents of the United States Secret Service on a number of political and public issues - the Carter amnesty decision, the political conflict in Ireland, between the Protestants and the Catholics, the quality of hospital and medical services rendered to disabled veterans such as Bennett himself. Bennett also talked about his own family problems and his own personal problems. At the very end of this 45 minute conversation, held at a bar in Suffolk County, when discussing his own disabled arm, and the poor medical and hospital service he received from the Government as a disabled veteran, Bennett stated "if the President doesn't fix my arm, I am going to kill him". Inas much as Agent Viggiano conceded on cross-examination that his own prior report to his office evidenced that it was he (Viggiano) who first used the words "kill the President", when Viggiano asked Bennett, "are you going to kill the President?" (Tr. 100), the jury had the right to consider as affirmative evidence, and not merely impeaching evidence, Viggiano's prior statement. In United States vs. Borelli, 336 F. 2d 376, 391 (CA-2, 1964), Judge Friendly, writing for unanimous court, stated (336 F. 2d at 391):

"When a witness thus affirms the truth of a prior statement, the earliest statement is to be considered 'not only as bearing on the credibility of the witness but as affirmative evidence'. The trier of the facts has 'two conflicting statements of equal force as evidence'"

The High Court has interpreted this statute (18 U.S.C. 871) on only one occasion - United States vs. Watts, 394 U. S. 705 (1969). In that case the Supreme Court reversed the conviction, and directed the entry of a judgment of acquittal. The defendant Watts had been involved in a discussion during a public rally at the Washington Monument grounds. The discussion involved police brutality and the draft. In the context of stating that he would not serve in the Army, Watts stated "if they ever make me carry a rifle, the first man I want to get in my sights is L.B.J." 394 U. S. at 706.

The Supreme Court began its discussion of the problem by noting the importance of the constitutional issue (394 U. S. at 707):

"Nevertheless, a statute such as this one, which makes criminal a form of pure speech, must be interpreted with the commands of the first amendment clearly in mind. What is a threat must be distinguished from what is constitutionally protected speech."

In discussing the applicability of the statute to the facts of the case, the Supreme Court held that the threat must indeed be a "true threat". 394 U. S. at 708. In this regard, the Supreme Court wrote (394 U. S. at 708):

"But whatever the 'wilfulness' requirement implies, the statute initially requires the government to prove a 'true threat.' We do not believe that the kind of political hyperbole indulged in by petitioner fits within that statutory term. For we must interpret the language Congress chose "against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public

officials." *New York Times Co. v. Sullivan*, 376 U. S. 254, 270, 84 S. Ct. 710, 721, 11 L. E. 2d 686 (1964). The language of the political arena, like the language used in labor disputes, see *Linn v. United Plant Guard Workers of America*, 383 U. S. 53, 58, 86 S. Ct. 657, 15 L. Ed. 2d 582 (1966), is often vituperative, abusive, and inexact. We agree with petitioner that his only offense here was 'a kind of very crude offensive method of stating a political opposition to the President.' Taken in context, and regarding the expressly conditional nature of the statement and the reaction of the listeners, we do not see how it could be interpreted otherwise."

The scope of the first amendment protection to freedom of speech with respect to issues of public or political nature is elegantly summarized in the landmark decision of *New York Times Company vs. Sullivan*, 376 U. S. 254, 269 - 270 (1964), in which Mr. Justice Brennan wrote (376 U. S. at 269-270):

"The general proposition that freedom of expression upon public questions is secured by the First Amendment has long been settled by our decisions. The constitutional safeguard, we have said, 'was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.' *Roth v. United States*, 354 U. S. 476, 484, 77 S. Ct. 1304, 1308, 1 L. Ed. 2d 1498. 'The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system.' *Stromberg v. California*, 283 U. S. 359, 369, 51 S. Ct. 532, 536, 75 L. Ed. 1117. '(I)t is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions,' *Bridges v. California*, 314 U. S. 252, 270, 62 S. Ct. 190, 197, 86 L. Ed. 192, and this opportunity is to be afforded for 'vigorous advocacy' no less than

'abstract discussion.' N. A. A. C. P. v. Button, 371 U. S. 415, 429, 83 S. Ct. 328, 9 L. Ed. 2d 405.

The First Amendment and Judge Learned Hand, 'presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all.' United States v. Associated Press, 52 F. Supp. 362, 372 (D.C.S.D.N.Y. 1943). Mr. Justice Brandeis, in his concurring opinion in Whitney v. California, 274 U. S. 357, 375-376, 47 S. Ct. 641, 648, 71 L. Ed 1095, gave the principle its classic formulation:

'Those who won our independence believed *** that public discussion is a political duty; and that this should be a fundamental principle of the American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsel is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law - the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.'

The Supreme Court has carved out an exception to the area of protected First Amendment right to freedom of speech, by noting the "fighting words" exception. Words in that category are "those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction." Chaplinsky vs. New Hampshire, 315 U. S. 568; Cohen vs.

California, 403 U. S. 15, 20 (1971).

As such, the statutory term "threat" must be read within the context of the First Amendment constitutional protection of free speech, and the congressional intent in enacting this statute. See reference to legislative history spelled out in both the majority and descending opinions in United States vs. Watts, 402 F. 2d 676, 686 (CA-DC, 1968), when the case was decided by the United States Court of Appeals. Also see footnote 416 9 in United States vs. Roy/F. 2d 874, 877 (1969), Watts vs. United States, 394 U. S. 705, 707 (1969). As such, in view of the constitutional protection, legislative history, and statutory interpretation given by the Supreme Court, we cannot read the word "threat" literally. We do well to recall Judge Learned Hand's caution in Guisseppi vs. Walling, 144 F. 2d 608, 624 (CA-2, 1944) - "There is no sure way to misread any document than to read it literally".

A review of the decisions of the Court of Appeals interpreting the statute shows that no other cases are really like Bennett's, and most fall into the pattern of case illustrated by this Court's decision in United States vs. Compton, 428 F. 2d 18 (CA-2, 1970). Compton telephoned the New York City Police Department, and stated immediately that he was going to assassinate the President. The evidence showed that just six months earlier he was in the same hotel with the President, just one floor below. In its charge to the jury, which this court held was "fair and adequate" (428 F. 2d at 22), the District Court instructed the jury that the threat

indeed must be a "true threat", and that "mere political hyperbole or discussion does not constitute a threat", and that a "crude, offensive method of stating political opposition to the President" is neither a threat. The jury convicted, and this Court had little trouble affirming conviction. Compton was not engaged in any discussion of public or political matters. He was not complaining about a wrong that had been done either to the public or to himself. He was merely announcing his intentions to assassinate the President. This is a far cry from our situation, where Bennett had a 45 minute discussion on a variety of public and political issues with two agents. Furthermore, Bennett's discussion with regard to his arm is really an expression with regard to a personal grievance, in which he is stating that he believes that redress should be received from the Government. This too is a proper form of political expression.

In United States vs. Roy, 416 F. 2d 874 (CA-9, 1969), the evidence established that the defendant was a marine corps private, and the President was due to arrive at his base the very next day. Roy telephoned the telephone operator, and stated that he would kill the President if the President came to the marine corps base. The Court of Appeals properly stated that if the threat were made in the context where it would appear to be a serious threat, and a reasonable person could interpret it as a serious expression of intent to do harm, the statute was violated.

BASE-A
TYPE-ERASE
25% COTTON FIBER USA

There was little difficulty affirming the conviction of Roy. In our situation, the opposite really prevails. The circumstances of the conversation was such that no reasonable person could possibly interpret Bennett's remark as being a serious threat to the life of the President. Basically, Bennett was complaining about a variety of public and political issues. Eventually he turned to his own situation, and complained about the poor quality of the medical service being rendered to him by the federal government. In that regard, he placed the blame upon the President, who is the head of our executive branch of government. Bennett was expressing his dissatisfaction with the quality of federal governmental services - an opinion shared by many, if not most, in this country. His expressions were not judicious. However, they probably were not any different from many parents of small children, who express their annoyance at the moment when their child fails to do something - "if you don't eat your cereal I will kill you". Such a threat must be taken within the circumstances and context in which it was made.

CONCLUSION

The judgment of conviction should be reversed, and a judgment of acquittal should be entered. In its totality the evidence just does not add up to the fact that the appellant Bennett committed a crime. The legal requirements are too stringent to brand as criminal the bizarre expression of discontent voiced by Bennett.

Dated: January , 1978

Respectfully Submitted,

H. ELLIOT WALES
Counsel for Appellant Bennett
122 East 42nd Street
New York, New York 10017
Telephone: 212 682-6806

SPHINX

ERASABLE

INDEX TO APPENDIX ON APPEAL

Clerk's Docket Entries	A - B
Indictment	1
Judgment	2
Notice of Appeal	3

PAGINATION AS IN ORIGINAL COPY

APPEAL

Assigned U.S.
1/25/77

JAMES EDWIN BENNETT

(NAME PRINTED FULLY)

6 7 77 319 1

18: 0/1(0)

**Did wilfully threaten the life of
the President of the U.S.**

1

U.S. MAR. COURT DIST. N.Y.
CASE NO. 77-12

AMT	100,000
Detained	
100,000	
Date	1-26-77
Get Not Made	
Status Changed (See Docket)	
10% Deposit	
Surety Bond	
Collateral	
Jury Cust	
Other	
SENTENCE	

KEY DATES

1-26-77

6-7-77

6-16-77

x

6-16-77

MAGISTRATE

Search Warrant	Issued	Return	Issued	Served	Arrest Warrant Issued	COMPLAINT	OFFENSE (In Complaint)
1-26-77 VAC/07AA x							Threat against the life of the President. T-18 USC Section 871(a)
U.S. Attorney or Asst							ATTORNEY VS
Russo							Chris Trmini, Esq.
Katzberg -							

Show last names and suffix numbers of all defendants on same document information

DATE	(DOCUMENT NO.)	FACTS	REMARKS
2-7-77		Deft. to have mental examination. Case adjourned without date,	5-26-77 A
6-7-77		Before Chrein J - Indictment filed.	
6-16-77		Before Pratt, J.- case called - deft and counsel present - deft arraigned and after being advised of his rights and on his own beh enters a plea of not guilty- bail cont'd addid to 7/7/77 at 2:30 PM for motions, etc. - jury selection on 7/27/77 at 10:00 AM.	6-16-77
7-27-77		Before PRATT, J.- Case called for trial and jury selected. Trial to begin on 8-3-77	
8-8-77		Before PRATT, J.- Case called for trial and trial ordered and begun, deft and counsel present. Govt opens, & deft opens. Govt and deft rest. Deft's motion for a directed verdict, motion denied. Govt opens sums up and deft sums up. The court charges the jury at 4:00 P.M. The jury returns with a verdict at 2:20 P.M. and finds the deft guilty. Case adjd w/o de	

DATE	DOCUMENT NO.
-16-77	Before PRATT, J.- Case called for sentencing. Deft & counsel present. Deft sent. to: imprisonment for a period of five years and to be eligible for parole pursuant to T.-18, U.S.C. § 4204(b)(2). Clerk is ordered by the court to file notice of appeal in forma pauperis on behalf of the deft. Court recommends that the deft be sent to Springfield, Mo., for medical, dental & psychiatric treatment, with recommendation that parole commission look primarily to medical and psychiatric opinion as to appropriate time for release
9-16-77	J & C filed.
9-16-77	Notice of appeal filed. copies mailed to C OF A.
9.22.77	Certified Copy of Judgment and Commitment returned and filed from Marshal. Deft. delivered to M.C.C., New York.
11-7-77	Scheduling order filed that the record on appeal be filed on or before Nov. 7, 1977
11-7-77	Record on appeal certified and handed to J.Gill for delivery to the court of appeals.
11-10-77	Certified copy of Judgment and Commitment Order returned and filed - executed. Deft delivered to U.S. Medical Center at Springfield, Mo. s1
11-11-77	3 transcripts filed, dated June 16, Aug. 8 and Sept. 16, 1977, respectively.
11-15-77	Acknowledgment filed recvd from c of a for receipt of record on appeal.
12-6-77	Voucher for Compensation for expert services filed and forwarded to A.O. for payment. sh

A. Is the
report
made
physi-
cian
U.S.C.
 B. NARS
under
U.S.C.
 C. Is the
report
made
physi-
cian
U.S.C.
 D. Is the
report
made
physi-
cian
U.S.C.
 E. Is the
report
made
physi-
cian
U.S.C.
 F. Is the
report
made
physi-
cian
U.S.C.
 G. Is the
report
made
physi-
cian
U.S.C.
 H. Is the
report
made
physi-
cian
U.S.C.
 I. Is the
report
made
physi-
cian
U.S.C.
 M. Un-
der
of
wit-
ness
U.S.C.
 N. Is the
report
made
physi-
cian
U.S.C.
 O. Is the
report
made
physi-
cian
U.S.C.
 P. Is the
report
made
physi-
cian
U.S.C.
 R. Is the
report
made
physi-
cian
U.S.C.
 T. Is the
report
made
physi-
cian
U.S.C.
 W. Is the
report
made
physi-
cian
U.S.C.

GP

DATE	RECEIPT NUMBER	C.D. NUMBER

RJD:RGR:ma
F. # 771,112

77CR 319

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA

- against -

JAMES EDWIN BENNETT, JR.,

Defendant.

INDICTMENT

Cr. No.
(T. 18, U.S.C., §871(a))

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ JUN 7 1977 ★

TIME A.M.
P.M.

----- X
THE GRAND JURY CHARGES:

On or about the 25th day of January, 1977
within the Eastern District of New York the defendant
JAMES EDWIN BENNETT, JR., did knowingly and willfully
make a threat to take the life of the President of
the United States. (Title 18, United States Code,
Section 871(a)).

A TRUE BILL

Hubert H. Carter
FOREMAN

David G. Trager
DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

United States of America vs.

FILED

United States District Court for

EASTERN DISTRICT OF NEW YORK

DEFENDANT

JAMES EDWIN BENNETT, JR.

DOCKET NO. 77 CR 319

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
9	16	77

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

CHRIS TERMINI

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of violating Title 18, United States Code, Section 871(a), in that, on or about the 25th day of January, 1977 within the Eastern District of New York, the defendant did knowingly and willfully make a threat to take the life of the President of the United States.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE
OR
PROBATION
ORDER

Defendant sentenced to : imprisonment for a period of 5 years and to to be eligible for parole pursuant to Title 18 United States Code, Section 4205(b) (2).

SPECIAL
CONDITIONS
OF
PROBATION

COMMITMENT
RECOMMEN
DATION

SIGNED BY

☐ U.S. District Judge

☐ U.S. Magistrate

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D.N.Y.

★ SEP 16 1977 ★

TIME A.M. _____
P.M. _____

The court orders commitment to the custody of the Attorney General and recommends,

that the defendant be sent to Springfield, Mo., for medical, dental and psychiatric treatment and care, with recommendation that Parole Commission look primarily to medical and psychiatric opinion as to appropriate time for release.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

Date

9/16/77

2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT NEW YORK

UNITED STATES OF AMERICA

- vs -

JAMES EDWIN BENNETT

NOTICE OF APPEAL

File No: 77-Cr-319

Notice is hereby given that the defendant

James Edwin Bennett hereby appeals in forma pauperis
to the United States Court of Appeals for the Second Circuit
from the final Judgment entered in this proceeding on the

16 day of September

1977

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ SEP 16 1977 ★

TIME A.M. _____
P.M. _____

Dated: ^{Westbury}~~Brooklyn~~, New York

Sept. 16, 1977

By Direction of the Court

LEWIS ORGEL, CLERK
U.S. District Court
Eastern District of New York
on behalf of the defendant

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

Index No.

UNITED STATES OF AMERICA

Plaintiff

against

JAMES BENNETT

Defendant

AFFIDAVIT OF SERVICE
BY MAIL

STATE OF NEW YORK, COUNTY OF NEW YORK

SS.:

The undersigned being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at

769 Heckscher Avenue, Bay Shore, New York

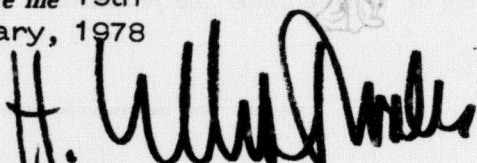
That on January 11th
Brief and Appendix on Appeal

19 78 *deponent served the annexed*

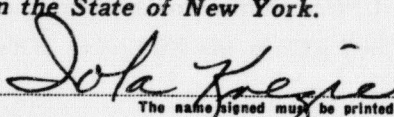
on the United States Attorney
attorney(s) for plaintiff

in this action at 225 Cadman Plaza West, Brooklyn, New York
the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed
in a postpaid properly addressed wrapper, in—a post office—official depository under the exclusive care
and custody of the United States Postal Service within the State of New York.

Sworn to before me 19th
day of January, 1978



H. ELLIOT WALES
NOTARY PUBLIC State of New York
No. 24-4129915
Qualified in Westchester County
Commission Expires March 30, 1979



The name signed must be printed beneath

IOLA KREZIC

